

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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DANIEL W. KELLER,

Plaintiff,

v.

FBI, *et al.*,

Defendants.

Case No. 3:25-CV-00287-MMD-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

Before the Court is Plaintiff Daniel W. Keller's ("Keller") motion to proceed *in forma pauperis*, (ECF Nos. 1, 4), *pro se* civil rights complaint (ECF No. 1-1), and motion for counsel, (ECF No. 1-3). For the reasons stated below, the Court recommends that the *in forma pauperis* application, (ECF No. 1), be denied as moot, the complaint, (ECF No. 1-1), be dismissed without prejudice and without leave to amend, and the motion for counsel, (ECF No. 1-3), be denied as moot.

I. *IN FORMA PAUPERIS* APPLICATION

A person may be granted permission to proceed *in forma pauperis* ("IFP") if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

Pursuant to LSR 1-1: "Any person who is unable to prepay the fees in a civil case may apply to the court for leave to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's

¹ This Report and Recommendation is made to the Honorable Miranda M. Du, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

1 income, assets, expenses, and liabilities.”

2 “[T]he supporting affidavit [must] state the facts as to [the] affiant’s poverty with
3 some particularity, definiteness and certainty.” *U.S. v. McQuade*, 647 F.2d 938, 940 (9th
4 Cir. 1981) (quotation marks and citation omitted). A litigant need not “be absolutely
5 destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*,
6 335 U.S. 331, 339 (1948). An inmate submitting an application to proceed IFP must also
7 “submit a certificate from the institution certifying the amount of funds currently held in the
8 applicant’s trust account at the institution and the net deposits in the applicant’s account
9 for the six months prior to the date of submission of the application.” LSR 1-2; *see also*
10 28 U.S.C. § 1915(a)(2). If the inmate has been at the institution for less than six months,
11 “the certificate must show the account’s activity for this shortened period.” LSR 1-2.

12 A review of the application to proceed IFP, (ECF No. 1), and financial certificate,
13 (ECF No. 4), reveals Keller cannot pay the filing fee. However, because the Court
14 recommends that the complaint be dismissed, the Court recommends that the motion to
15 proceed IFP, (ECF No. 1), be denied as moot.

16 **II. SCREENING STANDARD**

17 Inmate civil rights complaints are governed by 28 U.S.C. § 1915A. Section 1915A
18 provides, in relevant part, that “the court shall dismiss the case at any time if the court
19 determines that . . . the action or appeal (i) is frivolous or malicious; (ii) fails to state a
20 claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant
21 who is immune from such relief.” 28 U.S.C. § 1915A(b). A complaint is frivolous when
22 “it lacks an arguable basis in either law or in fact.” *Neitzke v. Williams*, 490 U.S. 319, 325
23 (1989). This includes claims based on legal conclusions that are untenable (e.g., claims
24 against defendants who are immune from suit or claims of infringement of a legal interest
25 which clearly does not exist), as well as claims based on fanciful factual allegations (e.g.,
26 delusional scenarios). *Id.* at 327–28; *see also McKeever v. Block*, 932 F.2d 795, 798 (9th
27 Cir. 1991). Dismissal for failure to state a claim under § 1915A incorporates the same
28 standard applied in the context of a motion to dismiss under Federal Rule of Civil

1 Procedure 12(b)(6), *Wilhelm v. Rotman*, 680 F.3d 1113, 1122 (9th Cir. 2012), which
2 requires dismissal where the complaint fails to “state a claim for relief that is plausible on
3 its face,” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

4 The complaint is construed in a light most favorable to the plaintiff. *Chubb Custom*
5 *Ins. Co. v. Space Systems/Loral Inc.*, 710 F.3d 946, 956 (9th Cir. 2013). The court must
6 accept as true all well-pled factual allegations, set aside legal conclusions, and verify
7 that the factual allegations state a plausible claim for relief. *Ashcroft v. Iqbal*, 556 U.S.
8 662, 679 (2009). The complaint need not contain detailed factual allegations, but must
9 offer more than “a formulaic recitation of the elements of a cause of action” and “raise a
10 right to relief above a speculative level.” *Twombly*, 550 U.S. at 555. Particular care is
11 taken in reviewing the pleadings of a *pro se* party, for a more forgiving standard applies
12 to litigants not represented by counsel. *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010).
13 Still, a liberal construction may not be used to supply an essential element of the claim
14 not initially pled. *Pena v. Gardner*, 976 F.2d 469, 471 (9th Cir. 1992). If dismissal is
15 appropriate, a *pro se* plaintiff should be given leave to amend the complaint and notice
16 of its deficiencies, unless it is clear that those deficiencies cannot be cured. *Cato v.*
17 *United States*, 70 F.3d 1103, 1107 (9th Cir. 1995).

18 **III. SCREENING OF COMPLAINT**

19 In his complaint, Keller sues Defendants FBI, US Government, US Attorney
20 General, FBI Special Agent Tim Saginaw, FBI Special Agent Donald, and NNCC
21 Corrections Officer (collectively referred to as “Defendants”) under 42 U.S.C. § 1983.
22 (See ECF No. 1-1.) Keller sues Defendants for various claims which all seem to relate to
23 Keller’s underlying state criminal conviction. (*Id.*) Specifically, Keller alleges he met with
24 FBI agents in Reno to discuss a “very serious stalking matter involving elected Washoe
25 County Sheriff Darin Balaam”, but “rather than do their jobs, they [] accepted bribe money
26 from my family [and] closed case.” (*Id.* at 2-3.) Keller also alleges this led to “false
27 charges” and “false imprisonment”. (*Id.*) Keller seeks monetary relief as well as “release.”
28 (*Id.* at 6.)

1 42 U.S.C. § 1983 aims “to deter state actors from using the badge of their authority
2 to deprive individuals of their federally guaranteed rights.” *Anderson v. Warner*, 451 F.3d
3 1063, 1067 (9th Cir. 2006) (quoting *McDade v. West*, 223 F.3d 1135, 1139 (9th Cir.
4 2000)). The statute “provides a federal cause of action against any person who, acting
5 under color of state law, deprives another of his federal rights[.]” *Conn v. Gabbert*, 526
6 U.S. 286, 290 (1999), and is “merely . . . the procedural device for enforcing substantive
7 provisions of the Constitution and federal statutes.” *Crumpton v. Gates*, 947 F.2d 1418,
8 1420 (9th Cir. 1991). Claims under § 1983 require the plaintiff to allege (1) the violation
9 of a federally-protected right by (2) a person or official who acts under the color of state
10 law. *Anderson*, 451 F.3d at 1067.

11 However, § 1983 is not a backdoor through which a federal court may overturn a
12 state court conviction or award relief related to the fact or duration of a sentence. Section
13 1983 and “the federal habeas corpus statute . . . both provide access to the federal courts
14 ‘for claims of unconstitutional treatment at the hands of state officials, . . . [but] they
15 different in their scope and operation.’” *Ramirez v. Galaza*, 334 F.3d 850, 854 (9th Cir.
16 2003) (quoting *Heck v. Humphrey*, 512 U.S. 477, 48 (1994)). Federal courts must take
17 care to prevent prisoners from relying on § 1983 to subvert the differing procedural
18 requirements of *habeas corpus* proceedings under 28 U.S.C. § 2254. *Heck*, 512 U.S. at
19 486-87; *Simpson v. Thomas*, 528 F.3d 685, 695 (9th Cir. 2008).

20 When a prisoner challenges the legality or duration of his custody, raises a
21 constitutional challenge which could entitle him to an earlier release, or seeks damages
22 for purported deficiencies in his state court criminal case, which effected a conviction or
23 lengthier sentence, his sole federal remedy is a writ of *habeas corpus*. *Edwards v. Balisok*,
24 520 U.S. 641, 648 (1997); *Heck*, 512 U.S. at 481; *Wolf v. McDonnell*, 418 U.S. 539, 554
25 (1974); *Preiser v. Rodriguez*, 411 U.S. 475 (1973); *Simpson*, 528 F.3d at 692-93. Stated
26 differently, where “a judgment in favor of the plaintiff would necessarily imply the invalidity
27 of his conviction or sentence,” then “the complaint must be dismissed unless the plaintiff
28 can demonstrate that the conviction or sentence has already been invalidated.” *Heck*,

1 512 U.S. at 487.

2 It appears that Keller is challenging the constitutionality of his state court criminal
3 conviction. Consequently, he must demonstrate that his conviction has been overturned
4 to proceed in an action under § 1983. As he has not done so, his sole relief is a *habeas*
5 *corpus* action. Accordingly, the Court recommends that the complaint, (ECF No. 1-1), be
6 dismissed without prejudice and without leave to amend.

7 Based on this recommendation, the Court further recommends that Keller's motion
8 for appointment of counsel, (ECF No. 1-3), be denied as moot.

9 **IV. CONCLUSION**

10 For the reasons stated above, the Court recommends that the IFP application,
11 (ECF No. 1), be denied as moot, the complaint, (ECF No. 1-1), be dismissed without
12 prejudice and without leave to amend, and the motion for counsel, (ECF No. 1-3), be
13 denied as moot.

14 The parties are advised:

15 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
16 Practice, the parties may file specific written objections to this Report and
17 Recommendation within fourteen days of receipt. These objections should be entitled
18 "Objections to Magistrate Judge's Report and Recommendation" and should be
19 accompanied by points and authorities for consideration by the District Court.

20 2. This Report and Recommendation is not an appealable order and any
21 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
22 District Court's judgment.

23 **V. RECOMMENDATION**

24 **IT IS THEREFORE RECOMMENDED** that Keller's IFP application, (ECF No. 1),
25 be **DENIED AS MOOT**.

26 **IT IS FURTHER RECOMMENDED** that Keller's complaint, (ECF No. 1-1), be
27 **DISMISSED WITHOUT PREJUDICE AND WITHOUT LEAVE TO AMEND**.

28 **IT IS FURTHER RECOMMENDED** that the motion for counsel, (ECF No. 1-3), be

1 **DENIED AS MOOT.**

2 **IT IS FURTHER RECOMMENDED** that this action be **CLOSED**, and that judgment
3 be entered accordingly.

4 **DATED:** June 27, 2025.

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7 **UNITED STATES MAGISTRATE JUDGE**
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